

**Before the
Federal Communications Commission
Washington, D.C.**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Revision of the Commission's Rules)
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)

CC Docket No. 94-102
RM-8143

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REPLY

Omnipoint Communications, Inc. ("OCI" or "Omnipoint"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, submits this reply to oppositions filed in the above-referenced docket. On September 3, 1996, OCI filed a "Petition for Reconsideration and Clarification" (the "Omnipoint Petition") of the Commission's Report and Order and Further Notice of Proposed Rule Making, CC Dkt. No. 94-102, RM-8143, FCC 96-264, 61 Fed. Reg. 40348 (Aug. 2, 1996) (the "Report and Order").

The Omnipoint Petition requested that the Commission modify or clarify five aspects of its Report and Order:

- "Mobile identification number" should be defined in a technologically neutral manner. No party objected to OCI's position.
- The rule requiring carriers to block calls without a code identification (unless the designated PSAP, capable of receiving the call, requests otherwise) should be simplified to require wireless carriers to use best efforts to route all emergency calls to the appropriate PSAP. Alternatively, the Commission should provide CMRS operators with the same level of immunity from liability under state tort laws that is afforded to wireline carriers.
- Emergency TTY caller rules should be clarified and revised to reflect that short messaging service or analog TTY, if reasonably feasible, are acceptable means to fulfill the Commission's TTY E911 requirements.
- The 125 meter location accuracy requirement should be relaxed. Instead, carriers should be required to implement the best commercially reasonable location technologies available, consistent with the operator's transmission technology. Operators

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should not be forced to construct base stations simply to fulfill location accuracy requirements.

- The process for local and state governments to compensate operators for E911-related expenses should be clarified. Carriers should be paid upfront for these costs or, if required to accept an installment payments, operators should be fairly compensated for their opportunity costs.

The oppositions filed offer no significant legal, technical or policy rebuttal to the Omnipoint Petition. Therefore, Omnipoint urges that the Report and Order be modified to comport with technical realities and feasible economic implementation of E911 on wireless systems.

Discussion

I. Non-Code Caller Rules Must Protect Safety and Protect Carriers That Comply With FCC Regulations

The Commission should establish a uniform rule for routing E911 calls received from callers that do not transmit a code-identification ("non-code callers"). The current rule (47 C.F.R. § 20.18(b)), which leaves the routing decision to each individual PSAP operator, forces CMRS operators with license territories across several PSAP regions to implement a number of inconsistent and inefficient local PSAP orders. In addition, because no ALI system can ensure 100% accuracy, the rule threatens public safety as E911 calls inevitably will be mis-routed and dropped when those calls should have been processed. Omnipoint Petition at 5-6. Significantly, NENA, APCO, and NASNA (the "Joint Commenters") acknowledge that the rule requiring "a patchwork treatment of non-code calls, even varying among PSAPs within wireless coverage areas" has its "difficulties." Joint Commenters at 2. While they support retention of the rule, this support appears to be based primarily on the fact that the Joint Commenters "are unable to choose at this time between members who prefer to receive all calls -- even if non-returnable -- and those who believe non-code calls should not be forwarded." Id. The

Joint Commenters also suggest that a uniform solution may be preferable: "the FCC may be led to a uniform solution for non-code access in place of the current local option." Id. at 3.

Omnipoint wholeheartedly agrees with a uniform solution. See Omnipoint Petition at 4-8. As demonstrated by the fractional position of the Joint Commenters, it is imprudent to force an operator serving many different PSAP jurisdictions to conform its response to a 9-1-1 call to a variety of inconsistent PSAP approaches to non-code calls. Rather, operators should be subject to a clear, uniform standard and Omnipoint believes that public safety is best served by a rule requiring operators to use best efforts to route all 911 calls to the appropriate PSAP.

On the issue of liability for non-code calls, the Texas Advisory Commission argues that the Commission should not preempt state tort law, and not offer wireless carriers the same immunity from liability as they implement the PSAP and Commission E911 directives. Curiously, however, Texas describes how that state itself is providing immunity for wireless carriers. Comments of Texas Advisory Committee at 4 ("Texas has specifically determined that . . . wireless carriers in Texas are covered by the same broad statutory limitation of liability protections afforded wireline carriers."); id. at 5 (Texas Commission recommends that the Texas legislature clarify that 911 immunity extends to wireless carriers). These actions by Texas bolster Omnipoint's position for regulatory parity between wireless and wireline carriers.

For carriers operating outside Texas, however, the problem of liability remains real. For example, the Joint Commenters assert that they are not willing to extend the same liability immunity to wireless carriers because of "the state/federal jurisdictional differences in the regulation of wireline and wireless carriers." Joint Commenters at 3.

Thus, there can be no assurance that states will follow Texas' example.¹ The Commission needs to exercise its plenary authority over CMRS and preempt inconsistent state immunity provisions.²

II. TTY Requirements Must Reflect the Differences of Wireless Technology

Both the Texas Advisory Commission and the Joint Commenters object to Omnipoint's position that the TTY requirement, 47 C.F.R. § 20.18(c), should be more flexible to reflect the many technical and legal issues that are currently unresolved. Texas claims that Omnipoint's proposal for use of analog TTY devices "when reasonably feasible" would "leave[] too much to the discretion of the carrier." Texas Comments at 5. The Joint Commenters assert that the "reasonably feasible" standard "gives carriers an easy 'out' even if complying with the Commission's rule is 'readily achievable.'" Joint Commenters at 10.

Significantly, neither Texas nor the Joint Commenters respond to the unresolved issues raised by Omnipoint that must be remedied before digital wireless operators can truly offer E911 to TTY users. Current TTY technologies are not compatible with digital wireless transmission. See Omnipoint Petition at 9 - 14. While Texas and the Joint Commenters prefer to view the Omnipoint proposal as an operator attempt to defy

¹ See Communications Daily, at 8-9 (Oct. 17, 1996) (Xypoint study indicates that 35 states "have limited or no liability laws to protect wireless carriers that provide E911 emergency services").

² Joint Commenters argue that: "state rules on wireless carrier liability would be among those powers reserved to non-federal authorities by Section 332(c)(3) of the Communications Act." Id. at 3. This contradicts their earlier position that the states have a tenuous jurisdiction over wireless carriers. In addition, the states' disparate treatment between wireline and wireless carriers advocated by the Joint Commenters should be preempted by the Commission as a barrier to market entry, pursuant to 47 U.S.C. § 257.

meaningful regulation, the technical limitations outlined by Omnipoint demonstrate that the current rule cannot be practicably implemented and the Commission needs to further examine what is feasible progress toward wireless TTY and what is not.

The Joint Commenters' observation (at 10) that the Americans with Disabilities Act mandates 911 service for the disabled underscores the need to revisit the Commission's TTY requirement. While the Commission has laid down a blanket rule for TTY compliance, the provisions of Section 255 of the Telecommunications Act of 1996, which incorporate the concepts of the ADA, call for implementation of TTY when "readily achievable." This statutory standard emphasizes that regulations are warranted when compliance is "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9). Omnipoint's "reasonably feasible" standard is far more consistent with the Section 255 approach than the current rule, which seemingly takes no account of the technical and economic hurdles that stand in the way of actual implementation.³ In fact, the current rule is contrary to the Section 255 TTY implementation goals because it requires operators to achieve compliance within one year whether or not compliance at that time is "readily achievable." Omnipoint urges the Commission to reform its standard for TTY compliance to better match the relevant statutory standards and to reflect the technical issues that have yet to be resolved.

III. Location Accuracy Requirements Should Be Subject to Commercially Reasonable Techniques

As explained in the Omnipoint Petition at 15-19, the Commission's 125 meter location accuracy requirement is quite problematic from both a technical and financial

³ Despite the Joint Commenters' concerns, Omnipoint's proposed standard, which would require SMS or other "reasonably feasible" solutions, does not provide operators with an easy "out" from regulation, as compared with the ADA "readily achievable" standard.

perspective. Quite simply, the degree of cell coverage overlap, synchronized base station measurement, and measurement inaccuracies of the mobile service equipment on the market today make it virtually impossible to comply without completely redesigning many CMRS technologies.⁴ We seriously doubt that the Commission intended to significantly impair the diversity of CMRS technologies through the ALI regulation. Therefore, Omnipoint proposes a more technologically neutral solution by requiring operators to implement "the best commercially reasonable [ALI] techniques" which do not compromise the operator's technology choice or market deployment plans.

The Joint Commenters (at 4) vaguely assert that ALI standards should be upheld because "radiolocation of wireless callers has become . . . part of the licensee's coverage objectives in the public interest." This opposition rings hollow, however, because it implies that the Commission has changed its prior decisions not to dictate an operator's otherwise legitimate technology decisions, while the Commission has suggested no such policy shift.⁵ Moreover, such a regulatory shift away from open technology choices would directly restrict the range of CMRS services available to consumers, and contradict the Commission's settled policy to let market demand, and not inflexible regulation, determine that range of services.⁶

⁴ While KSI asserts that it has proven that the 125 meter location accuracy requirement can be achieved with its technology, Omnipoint is not aware that KSI has made any such demonstration with respect to PCS GSM-based systems.

⁵ In fact, in the FNPRM (at ¶ 147), the Commission specifically stated that "the market place should determine which digital protocols will survive, and we do not intend to reach different conclusions in this proceeding."

⁶ Joint Commenters also claim that any degree of alteration of an operator's system is "commercially reasonable" because the Commission's regulations provide for recovery of those costs. This perspective is wrong both because it overlooks the technical problems of location inaccuracy and because, as stated above, it discourages the

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IV. Unless Clarified, Cost Recovery Issues Are Likely to Delay E911 Deployment

Omnipoint requests clarification of the compensation rule, 47 C.F.R. § 20.18(f), which seemingly provides for wireless carriers to be compensated from PSAPs for the costs of deploying ALI technologies. The oppositions received to this modest proposal underscore the serious disagreement surrounding the compensation issue, and the need for prompt Commission clarification. For example, Texas implies that it is unwilling to actually fund ALI requirements that it imposes on wireless carriers. Comments of Texas at 7-8 (arguing that it cost recovery for E911 should be borne by wireless carriers and their customers).

Until the reimbursement and funding issues are resolved, the potentially enormous ALI costs will make it difficult for any operator to change its network. Wireless operators, like any businesses, are engaged in a commercial enterprise and they must have more than simply indefinite promises for repayment from cash-strapped local and state agencies before expending millions of dollars to change their systems at the PSAPs' request. The Joint Commenters' view (at 6) that operators should simply implement E911 ALI first, without any resolution of the cost recovery issues, is an untenable regulatory environment for commercial operators, especially small businesses like Omnipoint.

Omnipoint urges that the Commission ensure operators are fully compensated for implementing ALI, consistent with its current rule. At a minimum, the Commission must lay down some fair and upfront ground rules for compensation of the operator. For example, the Commission should clarify that an operator is to be fully funded by the

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deployment of a diversity of CMRS technologies. Moreover, one must question the efficacy of a federal regulatory plan that would force all states and local governments to pay for the full costs of re-engineering entire CMRS systems.

PSAP before the operator is required to make ALI changes. Otherwise, an operator may be left without adequate funding to complete a network change if, for example, funding is denied in times of government fiscal crisis or simply due to political changes or bureaucratic backlogs. If required to help finance the costs through an installment plan, wireless operators should be fairly compensated for supporting that local government expenditure and so the Commission should clarify that installment payments should include interest set at the operator's internal rate of capital.⁷ These clarifications in no way impinge on local or state governments' abilities to craft creative and individualized funding mechanisms. Clarification would simply reduce the financial uncertainty an operator faces, thus encouraging more expeditious investment in significant ALI network changes.

⁷ In effect, forcing carriers to accept an installment plan is government's decision to impose private financing rather than public financing, such as a municipal bond offering. In such cases, the economically efficient outcome is for the local governments to choose the least expensive cost of money available to it in the market. This can be implemented by requiring the government to pay the wireless operator's internal cost of capital.

Conclusion

For the foregoing reasons, and as presented in the Omnipoint Petition, Omnipoint urges the Commission to revisit its implementation of E911 for CMRS operators.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was this 18th day of October, 1996, mailed, postage prepaid, to the following:

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